

Cohen Dep.

In The Matter Of:

*AHERF v.
PRICEWATERHOUSECOOPERS LLP*

D. WALTER COHEN, D.D.S.

June 2, 2004

LEGALINK MANHATTAN
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COHEN, D.D.S., D. WALTER



<p>1 D. Walter Cohen, D.D.S. 2 tracking of productivity of purchased 3 practices? 4 A. Well, the people who I think had 5 responsibility for those. Was it Carol 6 Calvert, I think, was one. I know Harry 7 Gottlieb was another. I can't give you any 8 other details. 9 Q. Do you recall what Ms. Calvert's 10 role was with the system? 11 A. I thought she played a role in 12 trying to administer some of the practices 13 that were acquired. 14 Q. Any other recollection as to what 15 her role was with the system? 16 A. She was part of the administrative 17 team. 18 Q. Do you have any memory as to the 19 dates during which she was employed by AHERF? 20 A. It was during the time that the 21 practices had been acquired, which I guess 22 would have been between '96 and '98, I guess. 23 Q. During the course of your employment 24 at AHERF, did you have any understanding of 25 the source of funds that were used to pay the</p>	<p>Page 102</p> <p>1 D. Walter Cohen, D.D.S. 2 don't know who rejected whom. 3 Q. You had no involvement, sir, in the 4 decisions regarding which practices, if any, 5 to reject? 6 A. I had no part in that. 7 Q. Do you know who at AHERF had those 8 responsibilities? 9 A. No, I don't. 10 Q. You mentioned earlier this morning 11 that, I believe, University of Pennsylvania, 12 like AHERF, had also engaged in physician 13 practice acquisitions? 14 A. Yes. 15 Q. Was the, to your understanding, 16 acquisition of physician practices a common 17 strategy among AHERF's competitors to attempt 18 to combat the rise in managed-care? 19 A. I think the -- I can't talk about 20 all competitors. 21 I think University of Pennsylvania 22 and AHERF were sort of in a race to acquire 23 practices, recognizing that this may be one 24 way of offsetting managed-care problems. 25 Q. Do you recall, sir, any other</p>
<p>1 D. Walter Cohen, D.D.S. 2 salaries of AHERF's acquired physicians? 3 A. No. I know that there was an 4 announcement made by Sherif that \$500 million 5 had been set aside to acquire practices. I 6 thought that was Board approved by AHERF. I 7 don't know the source of the funds. 8 Q. And apart from the funds set aside 9 to acquire practices, do you have any 10 recollection of the source of funds used to 11 pay the salaries of the practices once they 12 were acquired? 13 A. I thought some of it came from the 14 revenue that the practices generated. 15 Q. But you don't have any specific 16 recall of those funds, sir? 17 A. No. 18 Q. That's a no? 19 A. I do not. 20 Q. Dr. Cohen, after the AHERF 21 bankruptcy, were you aware of any efforts to 22 reject contracts of any of the physicians that 23 had been acquired by AHERF in the 1990s? 24 A. I heard that there might be some 25 physicians who were leaving the system. I</p>	<p>Page 103</p> <p>1 D. Walter Cohen, D.D.S. 2 strategies shared by both AHERF and Penn, for 3 example, to attempt to combat the rise in 4 managed-care? 5 A. I wasn't that close to Penn. So, 6 you know, I couldn't... 7 Q. Do you recall that one of the 8 committees of the AHERF Board was the AHERF 9 Audit Committee? 10 A. Yes. 11 Q. Do you have a recollection of what 12 the role of that committee was? 13 A. To review financial statements and 14 work with the auditors in overseeing the 15 financial activities. 16 Q. Was it your understanding that the 17 AHERF Audit Committee was the primary contact 18 with the auditors during the course of an 19 AHERF year-end audit? 20 MR. FRIESEN: Objection. 21 A. Yes. 22 Q. Do you recall any AHERF Board 23 members who also sat on AHERF's Audit 24 Committee? 25 A. I don't remember the committees. I</p>

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1	D. Walter Cohen, D.D.S.	1	D. Walter Cohen, D.D.S.
2	could guess.	2	Tape No. 2. The time, 12:08.
3	Q. I don't want you to guess.	3	(Witness excused.)
4	A. Okay.	4	(Deposition concluded at 12:08
5	Q. Before joining us here today, Dr.	5	p.m.)
6	Cohen, have you had any discussions about this	6	- - -
7	deposition with any lawyers from Cravath,	7	
8	Swaine & Moore?	8	
9	A. No.	9	
10	Q. And have you had any discussions	10	
11	with lawyers from that firm about this	11	
12	litigation in general?	12	
13	A. No.	13	
14	MR. UNICE: I don't have any	14	
15	further questions for you, Doctor.	15	
16	MR. FRIESEN: I just have a	16	
17	couple of short followups.	17	
18	BY MR. FRIESEN:	18	
19	Q. You mentioned Carol Calvert?	19	
20	A. Yes.	20	
21	Q. Do you know anything about the	21	
22	circumstances under which Ms. Calvert left	22	
23	AHERF?	23	
24	A. I don't know anything about the	24	
25	circumstances. I know she was terminated	25	

	Page 107		Page 109
1	D. Walter Cohen, D.D.S.	1	
2	abruptly. And I can't tell you more than	2	INDEX
3	that. I just -- she had been a patient of	3	WITNESS
4	mine, but that's not related.	4	PAGE
5	Q. Without divulging any doctor/patient	5	D. Walter Cohen, D.D.S.
6	privileges, did you believe that Ms. Calvert	6	By Mr. Friesen 4, 106
7	was qualified to have the position that she	7	By Mr. Unice 86
8	did at AHERF?	8	- - -
9	A. I really had -- other than seeing	9	EXHIBITS
10	her as a patient, I had very little contact	10	NO. DESCRIPTION PAGE
11	with her as far as her responsibilities in the	11	2577 Minutes of Allegheny Health
12	AHERF system.	12	Services Board of Directors
13	You know, I wasn't party to what she	13	Meeting, 11/6/89 35
14	was doing or how she was doing it.	13	2578 Minutes of AHERF Board
15	MR. FRIESEN: I don't have any	14	Meeting, 3/26/93 39
16	further questions. Thank you.	15	2579 Minutes of AHERF Board
17	MR. FRYMAN: Thank you. I have	16	Meeting, 6/30/93 39
18	no questions.	17	- - -
19	MR. UNICE: We understand that	18	
20	you don't waive signature; is that right?	19	
21	MR. FRYMAN: That's correct.	20	
22	MR. UNICE: Just so it is on	21	
23	the record.	22	
24	VIDEO SPECIALIST: That now	23	
25	concludes this videotaped deposition and	24	
		25	

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1 I have read the foregoing
2 transcript of my examination given on
3 Wednesday, June 2, 2004, and it is true,
4 correct and complete, to the best of my
5 knowledge, recollection, and belief,
6 except for the corrections noted hereon
7 and/or list of corrections, if any,
8 attached on a separate sheet herewith.
9

10
11
12
13 -----
14 D. Walter Cohen, D.D.S.
15
16
17
18
19 Subscribed and sworn to
20 before me this ____ day
21 of _____, ____
22
23 -----
24 Notary Public
25

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1 I HEREBY CERTIFY that the
2 proceedings and evidence are contained
3 fully and accurately in the stenographic
4 notes taken by me upon the foregoing
5 matter on Wednesday, June 2, 2004, and
6 that this is a correct transcript of
7 same.
8

9
10
11
12
13
14 -----
15 Debra Ann Whitehead
16
17
18
19
20 (The foregoing certification of
21 this transcript does not apply to any
22 reproduction of the same by any means,
23 unless under the direct control and/or
24 supervision of the certifying reporter.)
25

A. Cook Dep.

In The Matter Of:

**AHERF v.
PRICEWATERHOUSECOOPERS, LLP.**

ANTHONY M. COOK

September 4, 2003

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COOK, ANTHONY M.



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A WORDWAVE COMPANY

ANTHONY M. COOK

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1 there.

2 I mean, if it's squeaky clean, and
 3 the only observations that are made in the
 4 management letter are ones that are correctable and
 5 perhaps even one time, then that's acceptable.

6 But if there are -- if the clean
 7 opinion comes with a list of qualifications such
 8 that the clean opinion is somewhat negated by those
 9 qualifications, then I'm not -- I don't think it is
 10 a clean opinion.

11 If that's answering your question.

12 Q. Well, maybe we are mixing up our terms here.

13 An opinion is given on the -- well,
 14 let me show you a document. Maybe we can talk
 15 about that from using some context here.

16 Would you take a look at a document
 17 that's been previously marked as Exhibit 1001.

18 A. Do I have that in Debbie's pile?

19 Q. I don't believe we have actually looked at
 20 that. So if you will give me --

21 MS. MEADEN: We can go off the
 22 record here briefly, I will get you a copy of it.

23 VIDEO SPECIALIST: Off video. The
 24 time, 3:58.

25 (Short recess.)

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1 Foundation as of June 30, 1996, and the
 2 consolidated result of its operations, changes in
 3 net assets, and cash flows for the year then ended
 4 in conformity with Generally Accepted Accounting
 5 Principles."

6 And my question is, based on your
 7 experience on Audit Committees and in business, do
 8 you recognize this as an opinion given by an
 9 outside auditor, a clean opinion on financial
 10 statements?

11 A. Yes, I do.

12 Q. And it relates to the fairness and accuracy of
 13 financial statements?

14 A. Correct.

15 Q. Correct.

16 Now, when you are talking about
 17 qualifications, you are talking about items that
 18 are raised in management letters; correct?

19 A. Correct.

20 Q. And is it your belief or understanding that
 21 the items raised in management letters reflect on
 22 the accuracy or fairness of the presentation of an
 23 entity's financial statements?

24 A. No.

25 MR. LUFT: Objection.

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1 VIDEO SPECIALIST: Back on. 3:59.

2 MS. MEADEN: For the record, Exhibit
 3 1001 is a document entitled Fiscal Year 1996
 4 Audited Financial Statements.

5 BY MS. MEADEN:

6 Q. And if you would take a look at the fifth page
 7 of this document bears Bates No. TN-CBC43B 01577.

8 A. Uh-huh. Yes.

9 Q. And it is titled Report of Independent
 10 Accountants.

11 Please review this, and then I will
 12 ask you a couple of questions.

13 A. I have read the letter.

14 Q. You have seen this before today; correct?

15 A. Yes.

16 Q. All right. As I said, the document is titled
 17 at the top Report of Independent Accountants. And
 18 if you look at the third paragraph of this letter
 19 that's addressed to the Board of Trustees of
 20 Allegheny Health Education and Research Foundation,
 21 and signed by Coopers & Lybrand, LLP, it states,
 22 "In our opinion, the consolidated financial
 23 statements referred to above present fairly in all
 24 material respects the consolidated financial
 25 position of Allegheny Health Education Research

1 BY MS. MEADEN:

2 Q. All right.

3 A. It is not.

4 Q. Then perhaps I misunderstood your earlier
 5 testimony.

6 You were talking about it being -- a
 7 clean opinion being qualified in the management
 8 letter, and I am trying to understand what you mean
 9 by qualified in a management letter.

10 A. Well, let me try to answer that question more
 11 clearly.

12 The clean financial statements are
 13 very, very important to any entity which has the
 14 obligation to use outside auditors or any auditor,
 15 inside or outside.

16 You want a clean opinion on the
 17 financials because that's -- that basically says
 18 the outside auditor accepts what you have stated to
 19 be your financial results over a period. Yes, I
 20 do, that is a clean opinion.

21 What I look for is, in the
 22 management letter, what recommended courses,
 23 recommended correction courses of actions, et
 24 cetera, are contained that in the future will make
 25 the clean opinion, the results reporting, even

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1 better.
 2 Q. Okay.
 3 A. Even cleaner.
 4 Q. All right. So you're not saying that any
 5 statements contained in a management letter call
 6 into question an opinion that may have been given
 7 on the financial statements?
 8 A. I am not; I am not.
 9 Q. Now, with respect to AHERF's audited financial
 10 statements, did you have any understanding that
 11 those financial statements were used or reviewed by
 12 any persons or entity outside the AHERF system?
 13 MR. LUFT: Objection.
 14 A. I did not.
 15 Q. Did you have any understanding as to whether
 16 audited financial statements of AHERF were used by
 17 any lending institutions or bond agencies or
 18 creditors?
 19 MR. LUFT: Objection.
 20 A. Well, I did not.
 21 But my assumption is that they were
 22 used by, you know, a bonding agency or financial
 23 institution as the foundation for, you know,
 24 floating the bonds or, you know, guaranteeing --
 25 not guaranteeing, but making the loans, et cetera.

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1 I mean, it is standard business practice.
 2 Q. And certainly you knew that AHERF's bonds were
 3 rated by bonding agencies?
 4 A. Oh, yes. Yes.
 5 MR. LUFT: Objection.
 6 BY MS. MEADEN:
 7 Q. And you also knew that AHERF had significant
 8 debt; correct?
 9 A. Yes.
 10 Q. And, so, there were lending institutions
 11 involved in arriving at that significant debt?
 12 A. Yes. My assumption was that they used the
 13 financials as the foundation for their decisions.
 14 Q. You had testified earlier that you reviewed
 15 the financial statements as you received them
 16 during your tenure on the Audit Committee.
 17 Did you have any particular purposes
 18 for which you used those financial statements? Did
 19 you use them as tools in any way to -- you
 20 personally?
 21 A. Personal purposes?
 22 Q. Right; right.
 23 A. Outside of the realm of my Trustee
 24 responsibilities, no.
 25 Q. No; I am talking about within the context of

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1 your Trustee responsibilities.
 2 How, if at all, did you use those
 3 financial statements, audited financial statements,
 4 in fulfilling or exercising your Trustee
 5 responsibilities?
 6 A. If I understand the question correctly, the
 7 increase year by year in receivables.
 8 I would do comparisons of my own in
 9 rates of increase, measuring the days, et cetera,
 10 over, say, a four or five-year period, which would
 11 give me trend lines. And if I -- I would discuss
 12 those, say, at an Audit Committee meeting.
 13 We didn't really get into that at
 14 the hospital Trustee meetings. The financials we
 15 looked at there were the internal generated --
 16 internally generated financials, which I spent
 17 probably more time on in terms of looking at trend
 18 lines and the ability to ask good questions at the
 19 Finance Committee about what's really happening in
 20 the institution.
 21 Q. Well, in other words, were you using the
 22 financial -- audited financial statements as a way
 23 of gauging the financial performance of AHERF and
 24 its affiliated entities?
 25 MR. LUFT: Objection.

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1 A. On a consolidated basis, yes.
 2 Q. Did you use the financial statements as a tool
 3 to make decisions about how to oversee management
 4 and, you know, its guidance of the business?
 5 MR. LUFT: Objection.
 6 A. Not really, no.
 7 Q. Did you use those audited financial statements
 8 to measure the financial performance of specific
 9 initiatives that AHERF had engaged in; for example,
 10 the acquisition of hospitals or doctors' practices?
 11 A. I would have to answer no. And my reason for
 12 saying no is that, it was very, very difficult to
 13 extract that sort of information from the
 14 consolidated financials.
 15 I was not privy to the hospital
 16 financials. I was not privy to the AIGH
 17 financials, or HIG, whatever it is. I was only
 18 privy to the medical school's financials and the
 19 consolidated.
 20 So I really -- I used the
 21 consolidated financials on a macro basis for
 22 analyzation and my hospital financials on a micro
 23 basis.
 24 Q. Didn't the consolidated statements, though,
 25 also have consolidating schedules at the back that

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1 did show specific information for various --
 2 A. Entity by entity, yes.
 3 Q. Yes.
 4 MR. LUFT: Objection.
 5 A. I just -- my interest was the medical school.
 6 My primary interest was the medical school.
 7 I did look at the consolidated
 8 financials in terms of the overall health of AHERF.
 9 Q. But because you weren't on the Board of AIHG,
 10 for example, you didn't focus in on the financial
 11 performance of that entity in particular; is that
 12 fair as an example?
 13 A. Well, it is an example. But I don't think it
 14 would be accurate for me to say I didn't at times
 15 look at them individually.
 16 I mean, I didn't throw my
 17 consolidates away. I kept them year by year.
 18 So if a question came up, I would go
 19 back and look at -- regarding the practices, I
 20 might go back and look at the base lines for the
 21 year before.
 22 Q. Okay.
 23 A. I was more concerned, frankly -- in using that
 24 entity as an example, I was more concerned in how
 25 they were being run. First how they were being

1 the private practices', results were included in
 2 the medical school's results, I always wanted to
 3 see them separate and distinct from the actual
 4 operations of the medical school and the clinical
 5 practices in the medical school.
 6 Q. I guess I am a little confused about that.
 7 Because I thought the practices were under the
 8 umbrella of a AIHG, which was a separate entity.
 9 How is it that the financial
 10 performance of the practices was included within
 11 the University?
 12 A. It was -- their financial results were
 13 included in the financial results, my
 14 understanding, of the medical school and separated
 15 for the consolidated financials of AHERF. I think
 16 I am correct on that.
 17 Q. But you were never in a position to vote yeah
 18 or nay on the continuing or -- on the continuing
 19 acquisition of physician practices; is that
 20 correct?
 21 A. It was a mystery. No one -- well, I shouldn't
 22 say, "no one." Very few people knew how that
 23 operated.
 24 I mean, the eye-opener was when the
 25 Inquirer ran an article on it one Sunday, on this

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1 acquired, and secondly how they were being run.
 2 Q. And how did information about how AIHG was
 3 being run or how the practices were being acquired
 4 reach you, through what channels?
 5 A. Various channels.
 6 Members of the AHERF management
 7 team, AHERF Delaware Valley management team;
 8 feedback from vendors to some of the operations
 9 that I just happened to know personally.
 10 It was more -- you know, there were
 11 concerns about what was happening. It was coming
 12 from inside and outside of the organization.
 13 Q. But you were not on a Board or committee that
 14 was specifically charged with overseeing the
 15 operations of the physician practices; is that
 16 correct?
 17 A. That is correct.
 18 Q. And in the context in which you were hearing
 19 information about concerns related to the
 20 acquisition of these physicians, was it more
 21 informational or was there some action that was to
 22 be undertaken by you?
 23 MR. LUFT: Objection.
 24 A. Well, it was more -- it was more
 25 informational. But when -- but since the practice,

1 dual between Penn and AHERF. And that's when we --
 2 as a Trustee I learned.
 3 Q. Do you recall time periods on that?
 4 A. I am going to say that was in about '96,
 5 perhaps; late '96, early '97.
 6 Q. Was it your understanding that the Board of
 7 AIHG, though, at least purportedly had the role of
 8 overseeing the acquisitions of the physician
 9 practices?
 10 MR. LUFT: Objection.
 11 A. I don't know that there was a board of AIHG.
 12 Q. Okay.
 13 A. I mean, if -- I just...
 14 Q. You just are unclear at all as to how the
 15 practices were acquired or approved to be acquired?
 16 A. Yes; yes.
 17 Q. You talked earlier today about Audit Committee
 18 meetings that you were in attendance at where the
 19 financial statements were presented, the audited
 20 financial statements?
 21 A. Right.
 22 Q. Typically that was in the fall.
 23 And you talked about Mr. Buettner's
 24 participation in those Audit Committee meetings.
 25 Did Mr. Buettner attend -- I think

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1 you said the Audit Committee met twice a year. Did
 2 he attend both meetings each year, in your
 3 recollection?

4 A. I think so. Yes, I believe so.

5 Q. And can you describe for me what his typical
 6 level of participation in those meetings was?

7 MR. LUFT: Objection.

8 A. On the -- as far as the annual Audit Committee
 9 meeting, where we reviewed and approved the -- or
 10 didn't approve the outside auditor's findings, he
 11 presented them. And it was a straight-forward
 12 examination of the financials. There were very few
 13 questions.

14 If the questions were asked, either
 15 he would answer them, or quite often Sheriff -- not
 16 Sheriff as much as David McConnell would answer
 17 them.

18 On the odd meetings, they were more
 19 devoted to the review and selection of the coming
 20 year's auditor, as I remember them. And Bill would
 21 present Coopers' case for continuing. And that
 22 would be, basically, it.

23 Q. I would like to back up for a moment.

24 My understanding is that in --

25 Fiscal Year 1997 was the first year that AHERF went

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1 a -- you know, on the proverbial single page, if
 2 you will, to account for all activities, all
 3 entities within AHERF, endeavors within AHERF, and
 4 so we would have a -- whether you were at the
 5 Trustee level on a Board or a committee level with,
 6 say, the Audit Committee, you would have a snapshot
 7 of all of AHERF.

8 Q. You had testified earlier today about concerns
 9 that you had about the relationship between the
 10 auditors and the senior management at AHERF.

11 And I am a bit confused as to
 12 whether your concerns were related to the
 13 relationship between the entities Coopers & Lybrand
 14 and AHERF because it was a long-standing
 15 relationship, or whether it was concern about the
 16 individuals involved, in other words, Mr. Abdelhak,
 17 Mr. McConnell, and Mr. Buettner, and their
 18 relationship.

19 Can you clarify that for me?

20 A. I had no -- I had no reason to not believe
 21 that Coopers was doing a fine job as the outside
 22 auditor. I mean, they certainly carried the
 23 appropriate credentials. They appeared to be very
 24 thorough in their external audits.

25 But my one concern there, as I

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1 to a consolidated, true consolidated, audit.

2 Do you recall -- does your
 3 recollection comport with that?

4 A. I don't -- I do not recall that.

5 Q. Okay.

6 A. I thought, actually, it had been done earlier,
 7 but...

8 Q. Regardless of the time period, do you recall
 9 discussions about AHERF's intent or the suggestion
 10 that AHERF go to a consolidated audit format?

11 A. I do remember that it was the intent of AHERF
 12 to present the entire entity's operations on a
 13 consolidated financial basis.

14 Q. Was that an issue that was raised within the
 15 context of an Audit Committee meeting, as you
 16 recollect?

17 A. No. As I remember it, it was raised at one of
 18 our medical school meetings directly by Sheriff.

19 Q. So you have no recollection, then, of any
 20 discussion of going to a consolidated audit at the
 21 Audit Committee meeting?

22 A. I do not.

23 Q. Do you recall any reasons that were given for
 24 going to a consolidated audit?

25 A. Primary reason was to present all of AHERF on

1 stated before, was, they had been doing it for a
 2 long, long time. And I thought that perhaps we
 3 should consider -- not perhaps; that we should
 4 consider having a change in outside auditors.

5 Q. When you say, "they," though, are you talking
 6 about the entity or Mr. Buettner himself as the
 7 engagement partner for some period of time on that
 8 account?

9 A. How did I use "they"?

10 Q. That's my question. That is my question.

11 A. Oh, when I say, "they."

12 Q. They had been the outside auditors.

13 A. Oh, I am referring to Coopers' performance as
 14 an outside auditor.

15 Q. The entity itself?

16 A. The entity itself --

17 Q. Okay.

18 A. -- I thought did a fine job. I had no reason
 19 to believe that they didn't.

20 But I was concerned over the fact
 21 that they had been doing it for a lot of years.

22 Okay?

23 Q. Right.

24 A. I was also concerned, and I mentioned this
 25 earlier, that Coopers was in the midst of a messy

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1 situation with PharMor. And, you know, I just
 2 was -- had a concern.
 3 Q. Do you know if any of the people who were
 4 involved on Coopers' behalf in the PharMor case
 5 were involved in the audit of AHERF?
 6 A. I was told they were not.
 7 Q. Did you ever know a Mr. Kirstein from Coopers
 8 & Lybrand? Did you have any --
 9 A. No, name is not familiar.
 10 Q. You don't know that name.
 11 Did you have any concerns about Mr.
 12 Buettner himself and his relationship with Sherif
 13 Abdelhak and David McConnell, and how that may
 14 impact the way in which the audit of AHERF's
 15 financial statements was performed?
 16 A. My concern -- yes, I did.
 17 Q. Okay.
 18 A. My concern was that I had a pretty good
 19 understanding, or I felt I had a pretty good
 20 understanding, of how Sherif operated.
 21 Q. Okay.
 22 A. And how McConnell operated.
 23 And I was concerned that Bill was
 24 strong enough, when things started going south,
 25 strong enough to stand up to them and say, I really

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1 think we should do this or do that.
 2 That situation may not have existed.
 3 But my concern was that he was going to be strong
 4 enough to really take issue to the point where he
 5 would not be a whistle-blower, per se, but really
 6 go to whoever he had to go to to voice his
 7 concerns.
 8 Q. Did you believe that --
 9 A. Let me just finish.
 10 Q. Yes.
 11 A. I had no concern, really, about Bill's
 12 integrity --
 13 Q. That's my --
 14 A. -- as an accountant, as a CPA and as a
 15 partner in charge.
 16 There was -- I'm sure there was a
 17 ton of pressure put on him often by Sherif and
 18 McConnell and the financial department.
 19 Q. Well, did your concerns go to circumstances
 20 where Mr. Buettner would not disclose to the Audit
 21 Committee if his audit had found material
 22 misstatements in the financial statements that were
 23 presented to him for audit?
 24 A. I didn't have a concern about that.
 25 Q. You felt that he would do that at that time?

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1 A. I felt he would do that, yes.
 2 Q. And did you feel that he would have gone to
 3 the Audit Committee if he had discovered in the
 4 course of Coopers & Lybrand's audit intentional
 5 misstatements on the financial statements?
 6 A. I think -- yes, I think he would have done
 7 that.
 8 Q. Okay.
 9 A. He certainly had a responsibility to do that.
 10 Q. And at the time did you believe that Mr.
 11 Buettner would have gone to the Audit Committee, if
 12 he had discovered fraud in the course of conducting
 13 his audit?
 14 A. I think so.
 15 Q. So notwithstanding those concerns, you said
 16 you didn't have any concerns at that time about Mr.
 17 Buettner's integrity; is that right?
 18 A. That is correct.
 19 Q. But you were concerned -- I'm trying to
 20 understand what it was you were concerned that he
 21 wouldn't do.
 22 A. As --
 23 Q. If anything.
 24 A. As I understood it, at the time AHERF
 25 represented close to or better than a million

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1 dollars worth of billings a year to Coopers.
 2 Q. Where did you have -- where did you obtain
 3 that understanding?
 4 A. Well, I knew what our annual engagement fee
 5 was, and I think at one meeting or another we
 6 talked about consulting fees in addition to that.
 7 So my --
 8 Q. Okay.
 9 A. I may be dead wrong in that, but my thought
 10 was that it was 800,000 plus.
 11 Q. Okay.
 12 A. And that that meant to me there was going to
 13 be a ton of pressure on the partner in charge to
 14 not go crosswise with the client.
 15 Q. How --
 16 A. And this was a gut feeling on my part. There
 17 was -- there was nothing in specific evidence that
 18 I was exposed to to support that.
 19 That concern was based on the size
 20 of the account and the fact we had no one else but
 21 Coopers that had been doing it for years.
 22 Q. What I am trying to square is your concern
 23 that he wouldn't go crosswise with the client with
 24 your statement that you think he would have told
 25 the Audit Committee if he had discovered, during

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1 the course of his audit, material
 2 misrepresentations, or material misstatements, or
 3 intentional misstatements, or fraud.

4 Is there some other type of
 5 situation where you were concerned that Mr.
 6 Buettner wouldn't go to the Audit Committee?

7 MR. LUFT: Objection.

8 BY MS. MEADEN:

9 Q. It is a convoluted question, and I apologize.

10 A. I would be reiterating what I said earlier
 11 about Bill personally as an -- I don't know him
 12 personally. I have never done anything with him
 13 socially. But as a professional accountant, I
 14 think that he fit that bill.

15 My concerns are the concerns that I
 16 previously stated. And I can only imagine, not
 17 having been there in the room with Sherif and Bill
 18 and McConnell, what sort of pressures, I'm sure, or
 19 I feel, were placed on Bill.

20 Now, is it to commit fraud or is it
 21 to commit something accounting -- akin to fraud?
 22 No. Is it over -- potentially overlooking this or
 23 overlooking that? Perhaps yes.

24 Q. Overlooking things that would rise to the
 25 level of material misstatements, though?

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1 pressure from --
 2 A. No, I did not; that was my feeling.
 3 Q. And you never shared that with anyone else on
 4 the AHERF Board or Audit Committee?

5 A. Not with him personally. The concern was the
 6 relationship between the two entities.

7 Q. And I take it, then, that that was not a topic
 8 that was part of your discussion with Mr. Barnes
 9 back in the spring or summer of --

10 A. No.

11 Q. -- '97?

12 A. No, it was not.

13 Q. You were asked a question -- and I am going to
 14 go back to my notes here -- earlier today about
 15 what in your view was the cause of AHERF's
 16 bankruptcy. Bear with me.

17 Let me strike that question and go
 18 on to another topic while I look through my notes
 19 here.

20 We talked a little bit earlier today
 21 about the Graduate transaction. And I think you
 22 said at one point that you were on some Board or
 23 committee where the transaction had been presented
 24 for approval, but it had already been completed.

25 Did I misunderstand your testimony?

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1 A. No; no.

2 Q. Smaller?

3 A. Yes.

4 Q. Okay.

5 A. I just -- and, you know, it is hindsight in
 6 2003 to look back at those times.

7 Q. I understand.

8 A. But I didn't sense enough of an arm's length
 9 relationship between Coopers and AHERF.

10 Q. Was this something that you did raise within
 11 the context of the Audit Committee meetings?

12 A. When I requested a review of our outside
 13 auditor and the consideration of receiving quotes,
 14 I know I said that, you know, we have had the same
 15 accounting firm for a long time, we have an
 16 accounting firm that is currently embroiled in a
 17 situation here in Pittsburgh that is very messy,
 18 and it looks like they are not going to come out of
 19 it very clean, and I think we ought to look
 20 outside.

21 Q. Okay.

22 A. And I think it was Bruce that was heading the
 23 Audit Committee, and he agreed.

24 Q. Did you raise, though, this concern that Mr.
 25 Buettner might not be able to withstand certain

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1 A. The first statement I believe I made was that
 2 the first time I learned about the Graduate
 3 acquisition was in the newspaper.

4 Q. Okay.

5 A. I believe that we were asked to approve the
 6 Graduate transaction after it had already -- it was
 7 a done deal, it was done.

8 Q. When you say, "we," who do you mean?

9 A. I say, "we." I -- frankly, I'm not sure
 10 whether it was the medical school Board or the
 11 Audit Committee.

12 I rather think it was the medical
 13 school Board. Now why would we be approving that
 14 transaction is a logical question.

15 And it may have been less a direct
 16 approval request or a -- than an information and,
 17 you know, Sherif saying, really would like to get
 18 the approval of MCP to go forward with this.

19 Q. Did you have any understanding that the
 20 transaction involving Graduate was actually a
 21 two-step transaction, where an entity known as SDN
 22 acquired the Graduate Hospitals in the first phase
 23 of the transaction?

24 Is that at all familiar to you?

25 A. (Witness shakes head.)

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1 Q. No?

2 A. No.

3 What does "SDN" stand for?

4 Q. There is some debate about that.

5 But you have never heard of that

6 entity?

7 A. I don't remember it.

8 Q. Do you recall?

9 A. I don't remember learning of that. I can't

10 remember that in the article.

11 Q. Do you recall getting any information about

12 the Graduate transaction from sources other than

13 the newspaper article?

14 A. No.

15 Q. So, needless to say, you weren't involved at

16 all in the negotiations leading up to that?

17 A. No.

18 As a matter of fact, a number of the

19 Delaware Valley Trustees said publicly that had we

20 been involved and had we been asked for an opinion,

21 we would not have voted to do it.

22 Q. And why is that?

23 A. Because Graduate --

24 MR. LUFT: Objection.

25 A. (Continued.) Well, I --

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1 Q. What is your view as to what --

2 A. I discussed that earlier.

3 I didn't see how -- I didn't see it

4 as a win/win for AHERF.

5 Q. Did you ever get any explanation from anyone

6 at AHERF as to why AHERF ultimately acquired the

7 Graduate hospitals?

8 A. The explanation that was given was, we were

9 going to set up an Orthopedic Center of Excellence

10 at Graduate Hospital, and the three B's were coming

11 over from -- I think they were Jeff at the time.

12 And that it was going to further

13 optimize -- or it was going to optimize's AHERF's

14 desire to have specialty centers, centers of

15 excellence within the system.

16 Q. Was there any explanation given as to why such

17 an orthopedic center couldn't have been established

18 in any of the other tertiary-care hospitals in the

19 AHERF system already?

20 A. No; no.

21 Q. Now, jumping around a bit, and I apologize, we

22 also talked earlier today about executive session.

23 What is your understanding as to why

24 an executive session is utilized?

25 MR. LUFT: Objection.

1 A. At the --

2 Q. At the Audit Committee.

3 A. At the Audit Committee.

4 Q. Yes.

5 A. My understanding is, it is used either to --

6 for the external auditor to request an executive

7 session so he can talk directly to just the Audit

8 Committee, without management present; or that it

9 is used for the Audit Committee to request

10 executive session and eliminate both the auditor

11 and management for just an executive committee

12 session, session of the Audit Committee.

13 Q. And in the case of where an executive session

14 is offered to an outside auditor, is that so that

15 the auditor may feel he can speak more freely with

16 management outside the room about the work that he

17 is conducting? Is that your understanding?

18 MR. LUFT: Objection.

19 A. That is my understanding.

20 Q. And is it your recollection that executive

21 session was always offered to Coopers & Lybrand

22 during the Audit Committee meetings that you

23 attended?

24 A. Yes.

25 Q. And do you recall Coopers & Lybrand ever

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<p>Page 258</p> <p>1 A. To the executive session?</p> <p>2 Q. To the Audit Committee either in executive</p> <p>3 session or otherwise.</p> <p>4 A. Or otherwise.</p> <p>5 I think the Audit Committee was --</p> <p>6 should expect the outside auditor to, in addition</p> <p>7 to just the numbers, bring to the committee any</p> <p>8 observations and/or concerns that have arisen</p> <p>9 during the audit process that the auditor feels</p> <p>10 should receive a hearing.</p> <p>11 Q. Things like material misstatements in the</p> <p>12 financial statements?</p> <p>13 A. Material misstatements in the -- you know, the</p> <p>14 internal audit controls.</p> <p>15 You know, they are not all major,</p> <p>16 certainly. But when the internal audit standards</p> <p>17 are reviewed during the normal control, and they</p> <p>18 believe there are improvements that could be made,</p> <p>19 that they be brought to the committee's attention.</p> <p>20 And they were typically done by way of the</p> <p>21 management letter.</p> <p>22 Q. What about things like concerns regarding the</p> <p>23 competency of the financial management, the entity;</p> <p>24 would you have expected AHERF's outside auditors to</p> <p>25 bring that to the Audit Committee, if they had felt</p>	<p>Page 260</p> <p>1 to the best of my knowledge, and their management</p> <p>2 letters never presented something like that.</p> <p>3 I would have -- I am not an</p> <p>4 accountant.</p> <p>5 Q. Right.</p> <p>6 A. But I certainly would not have expected an</p> <p>7 outside auditor to present, basically, a clean</p> <p>8 letter, and then in the management letter say, hey,</p> <p>9 we got some real, real problems here.</p> <p>10 Q. But in any communication other than the</p> <p>11 management letter, any form of communication other</p> <p>12 than a management letter, Coopers & Lybrand, during</p> <p>13 your tenure on the Audit Committee, never presented</p> <p>14 any issues of this type to the Audit Committee;</p> <p>15 correct?</p> <p>16 A. No, not that I --</p> <p>17 MR. LUFT: Objection.</p> <p>18 A. (Continued.) Not that I can remember.</p> <p>19 Q. Did you ever question the integrity or</p> <p>20 competence of Bill Buettner at any time?</p> <p>21 A. No.</p> <p>22 Q. At any time did you ever question the</p> <p>23 integrity or competence of Sherif Abdelhak?</p> <p>24 A. Yes.</p> <p>25 Q. And when did that first...</p>
<p>Page 259</p> <p>1 that there were real competency issues with AHERF's</p> <p>2 financial management?</p> <p>3 A. I would have expected it.</p> <p>4 Q. And would you have expected Coopers to have</p> <p>5 brought any fraudulent conduct that they may have</p> <p>6 uncovered during the course of their audit to the</p> <p>7 attention of the Audit Committee?</p> <p>8 MR. LUFT: Objection.</p> <p>9 A. Yes, I certainly would.</p> <p>10 Q. And if, again, there were intentional</p> <p>11 misstatements in the statements, financial statements</p> <p>12 that were presented for audit, you would have</p> <p>13 expected Coopers to bring that to the attention</p> <p>14 of --</p> <p>15 A. I wouldn't have expected to receive the</p> <p>16 consolidated results.</p> <p>17 Q. Or clean opinion letter?</p> <p>18 A. If they know, if they knew or suspected that</p> <p>19 there were material misstatements.</p> <p>20 Q. And during your tenure on the Audit Committee,</p> <p>21 I take it Coopers & Lybrand never presented any</p> <p>22 sort of issues of that type or concerns of that</p> <p>23 type to the Audit Committee; is that correct?</p> <p>24 MR. LUFT: Objection.</p> <p>25 A. We never had executive session with Coopers,</p>	<p>Page 261</p> <p>1 A. I can't -- when things started to go awry.</p> <p>2 When -- an example would be the Mid</p> <p>3 States accreditation is underway. We are upstairs,</p> <p>4 a group of us, inside Trustees, a few inside</p> <p>5 Trustees, but, you know, and a couple of outside</p> <p>6 Trustees, and there has been no mention whatsoever</p> <p>7 of these layoffs, and the word gets out and the</p> <p>8 place is surrounded by pickets.</p> <p>9 And, you know, that bothered me.</p> <p>10 Q. That was in the fall of '97; is that correct?</p> <p>11 A. I don't remember the time frame. That sounds</p> <p>12 about right.</p> <p>13 Q. Did that reflect on Mr. Abdelhak's integrity</p> <p>14 or competence in your mind?</p> <p>15 A. It reflected on both; it reflected on both.</p> <p>16 There were statements being made</p> <p>17 that were counter to that, and then suddenly this</p> <p>18 action is being taken.</p> <p>19 And it was -- you know, it was part</p> <p>20 of other things. I mean, that was just an</p> <p>21 incident.</p> <p>22 Q. And shortly -- just to try and put things in</p> <p>23 context, is it your recollection that shortly after</p> <p>24 that incident involving the pickets and the Mid</p> <p>25 State Atlantic -- is that it?</p>

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1 A. Mid States Accreditation.
 2 Q. Mid States Accreditation Committee, that it
 3 was shortly after that that you were no longer a
 4 full voting member of the Board's?
 5 A. Some time after that, yes.

6 MR. LUFT: Objection.
 7 BY MS. MEADEN:

8 Q. Do you have any recollection of the time
 9 period?
 10 A. I know I was made a Life Trustee in, what,
 11 January of '88 -- or '98. And this, I believe,
 12 occurred in '97.

13 Q. '97?
 14 A. The Mid States?

15 Q. Yes.

16 A. Yes.

17 Q. I would like to ask you a few questions about
 18 a document that you already looked at today, which
 19 is Exhibit 1953, which is the letter that you wrote
 20 to Mr. Brenner.

21 A. Yes.

22 Q. And I think when Mr. Luft first showed this to
 23 you, you called it the infamous letter.

24 Can you just tell me what you meant
 25 by that?

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1 First, what precipitated this letter
 2 to Mr. Brenner? Why did you write it, in other
 3 words?
 4 A. Well, Ralph was also on the Audit Committee.
 5 He was -- he was probably the other Delaware
 6 Valley -- there probably were just two of us. In
 7 looking at some of the minutes, I don't see anyone
 8 else from the Delaware Valley as a member.

9 And occasionally we went back and
 10 forth to the meetings together. I met Ralph
 11 through a mutual friend out -- totally outside of
 12 AHERF some time in the past. He had expressed
 13 interest in my consulting practice. And so we got
 14 to know each other a bit.

15 And I think this letter was the
 16 result, probably, of that October 15 Audit
 17 Committee meeting, where I was just frustrated over
 18 the availability and the timeliness of information.

19 Q. Was there anything that -- in particular that
 20 transpired at that October '97 Audit Committee that
 21 raised your frustration level?

22 A. Nothing that I can think of right at that
 23 meeting.

24 But it was, rather, more involved
 25 with the Delaware Valley proceedings, where we

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1 A. I received a call about a year, year and a
 2 half after the bankruptcy from the U.S. Attorney's
 3 office in Philadelphia with a request to come in
 4 for a visit.

5 And I agreed to the visit after
 6 chatting with the Assistant U.S. Attorney, U.S.
 7 Attorney. And it was during the course of my hour
 8 or so with him that this letter -- he brought up
 9 this letter.

10 And I had even forgotten I had
 11 written it to Ralph, but he had a copy of the
 12 letter I'm sure in the documents that were under
 13 discovery.

14 And we talked about it.

15 Q. And Mr. --

16 A. That's what I mean about the infamous letter.

17 Q. Because of your involvement with the U.S.

18 Attorney?

19 A. Yes.

20 Q. Yes.

21 A. My first and last exposure, I hope, to a U.S.
 22 Attorney.

23 Q. And Mr. Luft earlier today read into the
 24 record that first paragraph, but I do want to ask
 25 you some specific questions.

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1 were, you know, regularly fighting to get
 2 information.

3 Q. Do you --

4 A. And Ralph was the Board Chair at St. Chris.
 5 And I think he was probably on the parent AHERF
 6 Board, although I'm not sure.

7 Q. Well, the first sentence says, "As always, it
 8 was a pleasure to spend time with you last week
 9 following the AHERF Audit Committee meeting."

10 Did you and he have some discussion
 11 about AHERF, then, following that meeting? Is that
 12 what that sentence means?

13 A. We may have. I think we could have possibly
 14 flown back together that day, and we talked in
 15 general terms. But -- or, we could have gone out
 16 together, one or the other.

17 I expressed to him concerns over the
 18 availability and timeliness of information. And I
 19 thought, well, I am just going to put it in a
 20 letter to him.

21 Q. Was that -- do you recall if that -- well,
 22 based on your earlier testimony, you had that
 23 frustration before the October 15, '97, meeting?

24 A. Oh, yes. Sure. Sure.

25 Q. All right. Are you familiar with a woman by

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1 I HEREBY CERTIFY that the
2 proceedings and evidence are contained fully and
3 accurately in the stenographic notes taken by me
4 upon the foregoing matter on Thursday, September 4,
5 2003, and that this is a correct transcript of
6 same.

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20 (The foregoing certification of this
21 transcript does not apply to any reproduction of
22 the same by any means, unless under the direct
23 control and/or supervision of the certifying
24 reporter.)

25

C. D. Cook Dep.

C. DAVID COOK

<p>1 do you mean by that?</p> <p>2 A. Where we are particularly concerned about the 3 current measurement of profitability of a 4 company, and so that those were more growth 5 industries, communications, higher education, 6 public finance, financial institutions and 7 healthcare.</p> <p>8 Q. And do you recall what year that was that you 9 were in charge of that industry?</p> <p>10 A. Sure. I would have switched -- I would have 11 switched in '89, 1989 or 1990.</p> <p>12 Q. Do you know if that group that you were 13 managing was called the select industries 14 group?</p> <p>15 A. It was.</p> <p>16 Q. And what caused your move into being manager of 17 the select industries group?</p> <p>18 A. The bank essentially decided to significantly 19 reposition itself away from international.</p> <p>20 Q. And were you manager of the select industries 21 group with respect to a particular geographic 22 region within the United States?</p> <p>23 A. Not specifically, although as in the early -- 24 more as related to specific industries than 25 geography.</p>	<p>Page 14</p> <p>1 MS. HACKETT: We are talking about 2 back at that point in time.</p> <p>3 Q. Back at that point when there was a 4 Philadelphia team responsible for healthcare.</p> <p>5 A. A couple of names come to mind, but I can't be 6 sure whether -- whether they were there at the 7 time when we swapped responsibilities or not.</p> <p>8 Q. And what are those couple of names?</p> <p>9 MS. HACKETT: I don't want you to 10 guess or speculate, so if you are guessing or 11 speculating, you don't want to do that.</p> <p>12 A. Yeah, that's all I'm doing. If you are looking 13 for specific times and specific people on the 14 team, then I would be speculating, so it's 15 probably better not to answer.</p> <p>16 Q. And aside from specific times, do you know 17 anyone who at any point worked on that 18 Philadelphia team with respect to healthcare?</p> <p>19 A. Sure.</p> <p>20 Q. Can you tell me those people?</p> <p>21 A. Yeah, the Philadelphia team when we -- at the 22 end basically was led by a lady named Rhonda 23 Chatzkel, R-h-o-n-d-a, I'm sorry, you were 24 trying to --</p> <p>25 Q. Oh, no, I was trying to think of it for the</p>
<p>1 Q. So you focused in on those particular 2 industries, but within those particular 3 industries you had no geographic focus?</p> <p>4 A. Right.</p> <p>5 Q. And --</p> <p>6 A. My only hesitation is in the early -- in the 7 early times of being part of select industries, 8 we had a communications team in Philadelphia. 9 We still had communications relationships in 10 Pittsburgh, and there were separate 11 healthcare -- there was a separate healthcare 12 team in Philadelphia, and ultimately we decided 13 to combine from an industry focus. So all of 14 the communications credits went to that 15 Philadelphia team, and responsibility for all 16 of healthcare and public finance came to the 17 Pittsburgh team.</p> <p>18 Q. Do you know when all the responsibility for 19 healthcare moved over to the Pittsburgh team?</p> <p>20 A. I can't give you a specific date, but it would 21 have been early '90s.</p> <p>22 Q. Do you know who was on the Philadelphia team 23 with respect to healthcare?</p> <p>24 A. Do I know who was on the Philadelphia team with 25 respect to healthcare.</p>	<p>Page 15</p> <p>1 court reporter as well. What's her -- how does 2 her last name?</p> <p>3 A. C-h-a-t-z-k-e-l, Tim Fitzgerald, that's 4 probably easier, Jack Squires, Squires, 5 probably not with a Q, and then it starts to 6 get fuzzy.</p> <p>7 Q. And when you were manager of the select -- 8 well, let me back up. 9 When there was still a Philadelphia 10 group as well as a Pittsburgh group handling 11 healthcare issues, what was the divide in 12 responsibilities between those two groups?</p> <p>13 A. It was more geographical. At that point the 14 industry focus would have been more dealing 15 with names of -- names and clients that were in 16 the geography close to the city we are talking 17 about.</p> <p>18 Q. Okay. And was the AHERF relationship, once it 19 came to exist between PNC and AHERF, the 20 responsibility of the group in Pittsburgh?</p> <p>21 A. It was.</p> <p>22 Q. And did the group in Philadelphia have any 23 responsibility at all with respect to AHERF?</p> <p>24 A. No.</p> <p>25 Q. When you were -- when you started to be manager</p>

5 (Pages 14 to 17)

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<p>1 of the select industries group in Pittsburgh in 2 '89, who did you manage with respect to AHERF? 3 A. Fellow named Emery Holloway, and a -- Emery 4 Holloway. 5 Q. And how long did you remain manager of the 6 select industries group? 7 A. Until we changed its name to the healthcare and 8 public finance group. 9 Q. And do you recall when that was? 10 A. No, I don't. 11 Q. And did you continue as manager of the 12 healthcare and public finance group? 13 A. I did. 14 Q. And how long did you hold that position for? 15 A. Until we basically put -- until we basically 16 disbanded healthcare and public finance. 17 Q. Do you recall when that was? 18 A. Would have been about four years ago. 19 Q. So approximately '99? 20 A. Yeah. 21 Q. And when you say that you were manager of first 22 the select industries group and then the 23 healthcare and public finance group, did your 24 title change over time? 25 A. I went from being a vice president to being a</p>	<p>Page 18</p> <p>1 A. I mean it would have included Marcie Knittel, 2 it's actually probably Marcella Knittel, and 3 obviously Frank stayed involved, fellow named 4 Bob Courie, C-o-u-r-y, and there may be other 5 people involved whose names don't come to me at 6 this point. 7 Q. Was Jeffrey Dickson a person who was involved? 8 A. Jeff certainly was involved for a period of 9 time, yes. 10 Q. And do you recall if the progression of 11 relationship managers over AHERF went from 12 Emery Holloway to Robert Courie to Marcella 13 Knittel and then to Jeffrey Dickson? 14 A. I don't specifically recall that, no. 15 Q. And do you recall if -- were all four of those 16 individuals relationship managers? 17 A. They were. 18 Q. And do you recall a person by the name of 19 Dorothy Hunter? 20 A. I do. 21 Q. Could you tell me what roles she held? 22 A. Dorothy was more -- more what I would call a 23 junior relationship manager moving into a 24 relationship manager position. 25 Q. And I take it she never became a relationship</p>
<p>1 senior vice president. 2 Q. And at some point in time, did it come to be 3 the case that there were layers of management 4 between you and the relationship managers who 5 helped work on the AHERF deal? 6 A. Yes. 7 Q. Do you recall when that occurred? 8 A. No. 9 Q. At the point in time when that change occurred, 10 can you tell me who was -- became the 11 management level or who occupied the management 12 level between you and the relationship 13 managers? 14 A. Well, as far as the Pittsburgh team was 15 concerned, Frank Taucher became the manager. 16 Q. And do you recall when you first started 17 working on AHERF-related matters? 18 A. No. 19 Q. During your time working on AHERF-related 20 matters, do you recall who the people were that 21 you had responsibility for managing? 22 A. Well, over -- over a course of years, there 23 were a number of people involved. Would you 24 like -- would you like a few of them? 25 Q. Sure.</p>	<p>Page 19</p> <p>1 manager with respect to AHERF matters? 2 A. I -- in thinking about that, I can't confirm 3 that one way or the other. 4 Q. And were there any -- well, do you know the 5 name Paula Mammarella? 6 A. I do. 7 Q. Was she another junior relationship manager? 8 A. She was, yes. 9 Q. Were there any other individuals who you worked 10 with who you can recall having responsibility 11 over AHERF-related matters? 12 A. No. 13 Q. And you said Frank Taucher at some point became 14 the manager of those individuals and he then 15 reported on to you? 16 A. Yes. 17 Q. Did you work with any people on the credit side 18 at PNC or in a credit group at PNC who also had 19 involvement with AHERF-related matters? 20 A. Certainly. 21 Q. Would it be fair to call the group of people 22 including yourself, Frank Taucher and the 23 relationship and junior relationship managers 24 you mentioned as being on the relationship side 25 at PNC with respect to AHERF matters?</p>

6 (Pages 18 to 21)

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<p>1 there's a provision No. 1 that talks about 2 notifying the trustee of an event of default 3 and directing the trustee to declare an event 4 of default as defined in the indenture to 5 accelerate the bonds and draw on the letter of 6 credit and/or to exercise remedies under the 7 bonds documents?</p> <p>8 A. Right.</p> <p>9 Q. Not with respect to this particular letter of 10 credit necessarily, but just on your 11 understanding of PNC letters of credit, do you 12 have any understanding of what the distinction 13 is between those two provisions?</p> <p>14 MR. COGAN: Objection.</p> <p>15 A. I'd actually -- I'd suggest that paragraph 1 16 relates to the relationship between the bank 17 and -- I'm sorry, not paragraph 1 but point 1 18 is between the bank and the trustee and point 3 19 is the bank and the corporation.</p> <p>20 Q. And do you have any understanding of what 21 distinction there is between asking the trustee 22 to accelerate the bond and draw on a letter of 23 credit versus the PNC declaring a client's 24 obligations immediately due and payable?</p> <p>25 A. Yes, I do.</p>	<p>Page 94</p> <p>1 Q. And in that instance would bondholders be 2 repaid by the trustee?</p> <p>3 A. Bondholders would have been repaid because the 4 bonds that they owned would have been purchased 5 by the trustee.</p> <p>6 Q. And you are saying effectively PNC would own 7 the bonds because PNC is the one who provided 8 the funds?</p> <p>9 A. PNC provides the cash so we -- I'm not sure I 10 know whether we legally become the owner of the 11 bonds -- I don't know whether we would legally 12 become the owner of the bonds or we have an 13 hypothecated interest but --</p> <p>14 Q. And in instances where PNC instead just called 15 the corporation's obligations immediately due 16 and payable, what would happen under those 17 circumstances?</p> <p>18 A. You wouldn't necessarily have changed the 19 relationship of the bondholder to the bonds, 20 they would still own them, but the bank would 21 have gathered collateral that would have -- 22 perhaps would have gathered collateral to fully 23 secure its position.</p> <p>24 Q. In that instance would the corporation in 25 essence have to pay the trustee the amount of</p>
<p>Page 95</p> <p>1 Q. And could you tell me what your understanding 2 is?</p> <p>3 A. My understanding would generally be that if we 4 act under section 3, or point 3, I never 5 remember what these are called, it's not a 6 section I guess, it's a point, that we would 7 actually be asking our client, the corporation, 8 to basically fulfill all of their obligations 9 under the agreement, and that could be separate 10 from our notifying the trustee and asking them 11 to basically declare that there's been an event 12 of default and accelerate the bonds.</p> <p>13 They are two -- again, it's kind of 14 like apples and oranges. There are two 15 different facets of the relationship.</p> <p>16 Q. If a trust -- based on your understanding, if 17 the trustee declares an event of default and 18 accelerates the bonds, does that -- what 19 happens under that circumstance?</p> <p>20 A. If the bonds are accelerated, the bondholders 21 are basically asked to tender their bonds, and 22 the trustee would then draw under the full 23 value of the letter of credit, which 24 effectively makes the bank the owner of the 25 bonds.</p>	<p>Page 97</p> <p>1 money that's --</p> <p>2 A. That's not what it says. What it says here is 3 the corporation's obligations would become due 4 and payable. The corporation's obligations are 5 the bank. So we -- we can issue stand-by 6 letters of credit on a variety of bases. We 7 can issue unsecured, we can issue secured, and 8 that secured can include cash collateral.</p> <p>9 So we could perhaps, having not read 10 this document, we could perhaps simply be 11 moving to get cash to secure our obligation 12 with the trustee which leaves the bonds in 13 place.</p> <p>14 Q. Got it. Let me refer you to 7.03 which talks 15 about waivers.</p> <p>16 A. Okay.</p> <p>17 Q. Do you know if that is a standard provision in 18 PNC letters of credit, that PNC with waive 19 noncompliance with covenants or other defaults 20 if PNC so desires?</p> <p>21 A. It's certainly a concept I've seen.</p> <p>22 Q. And do you know if PNC has any policies or 23 practices with respect to decisions to waive 24 noncompliance?</p> <p>25 A. I'm not familiar with what's in place today,</p>

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		Page 98	Page 100
1	no.		
2	Q. How about back during the '90s? Do you know?		1 have granted a waiver or not?
3	A. We would have -- well, discussion of a waiver	2 A. That's correct.	
4	would have been -- would have probably had some	3 Q. Do you know if PNC ever asked to examine the	4 books of AHERF's, bookkeeping entries that
5	approvals associated with it.	5 A. AHERF accountants generated?	6 A. No, I'm not aware of that.
6	Q. I'm sorry, would have had some?	7 Q. And did you ever visit any of AHERF's	7 properties in connection with any credits that
7	A. Would probably have had some approvals,	8 9	were outstanding?
8	internal approvals associated with it.	10 A. Yes.	
9	Q. So depending on the dollar amount, either you	11 Q. Do you recall how often you did that?	
10	could approve it or people above you would be	12 A. No, but I would say regularly.	
11	required to approve it as well, is that what	13 Q. What would be the reason for your visits?	
12	you are saying?	14 A. Basically to share information, and	
13	A. That's possible. I mean I don't remember	15 relationship managers might have done it,	
14	specific policies and waivers.	16 managers working for me might have done it, I	
15	Q. Do you know if there are any documents that	17 certainly did it.	
16	sets forth any considerations that had to be	18 I mean a relationship with a client	
17	taken into account in dealing with waivers?	19 is, you know, is ongoing and continuous, and so	
18	A. No.	20 you want to not only be getting the financial	
19	Q. And you said you don't recall any policies with	21 statements as they are prepared, but you really	
20	respect to waivers. Do you know if there were	22 want to have an ongoing dialogue of competition	
21	any standard practices, even if they weren't	23 and what's going on in the markets and just how	
22	embodied in a policy document or anything like	24 are they really managing the business, what are	
23	that?	25 their challenges.	
24	A. I tried to cover that in the earlier -- the		
25	earlier answer. You know, covenants --		
		Page 99	Page 101
1	covenants are part of a transaction, in the	1 THE VIDEOGRAPHER: I'm sorry, we've	
2	same way that a rumble strip is built in a	2 got about five minutes left on this tape.	
3	highway, and when you are driving on the	3 Q. Okay. Were the visits for purposes of meeting	
4	highway, you don't know that you are going to	4 with officers or other individuals at AHERF?	
5	need it, but it's nice if it's there, and if	5 A. Yes, they would have been.	
6	you hit it, you don't know what you are going	6 Q. Did you ever perform any visits where to	
7	to do, but it's telling you you got to think	7 essentially -- or did you ever have any visits	
8	about what's going on, and maybe you pull back	8 to perform due diligence and to look at various	
9	on the highway, maybe you let it rumble for a	9 facilities of AHERF's?	
10	while, you know, or not, and a waiver -- a	10 MR. COGAN: Objection.	
11	waiver depends on that as well.	11 A. And my answer really is due diligence is the	
12	But much like when you are driving on	12 natural ongoing process of the relationship	
13	the turnpike, if you've had the pleasure of our	13 with the customer. I mean everything that you	
14	Pennsylvania Turnpike, you know, you want a	14 are doing is part of the due diligence process	
15	rumble strip to be there just in case	15 because you are -- because you are continuously	
16	something's going on in the external	16 trying to affirm how you feel or don't feel	
17	environment that you didn't see.	17 about the customer.	
18	Q. So is it fair to say that PNC's decisions	18 Q. So when you say everything that you are doing	
19	during the '90s as to whether to waive covenant	19 is due diligence, you mean that the whole of	
20	noncompliance depended on the circumstances of	20 your --	
21	each noncompliance?	21 A. I mean every phone call, every phone call,	
22	A. Yes, it is.	22 every visit, every piece of paper they send you	
23	Q. And there is, therefore, no principles that one	23 is part of the ongoing due diligence process.	
24	could state that would govern whether under	24 There isn't -- I never view that February 1 to	
25	certain circumstances PNC necessarily would	25 February 10th we are doing due diligence. You	

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<p style="text-align: right;">Page 102</p> <p>1 know, I think it's January 1 to December 31, so 2 you can't separate it.</p> <p>3 Q. So across your or PNC's relationship with 4 AHERF, there was a continual process of due 5 diligence on the part of --</p> <p>6 A. Right.</p> <p>7 Q. -- of yourself and others under your 8 responsibility?</p> <p>9 A. Mm-hmm.</p> <p>10 Q. I'm sorry?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And before we change the tape, let me 13 ask you, did you ever visit the properties of 14 AHERF entities to inspect the properties 15 themselves and to meet with people who were 16 operating or managing those properties?</p> <p>17 MS. HACKETT: Objection, I thought he 18 just answered that, but answer it again.</p> <p>19 A. Yeah, I can't recall any visit where I went to 20 inspect. I feel comfortable with that. I 21 can't recall any visit where I went to inspect, 22 but I also can't recall any time when I visited 23 any customer anywhere where I haven't paid 24 attention to my surroundings. That's kind of 25 the best answer I've got.</p>	<p style="text-align: right;">Page 104</p> <p>1 A. Yeah, the concept's standard.</p> <p>2 Q. Okay. Do you have any understanding of what's 3 the reason for affording to PNC clients a 4 30-day cure period?</p> <p>5 MR. COGAN: Objection.</p> <p>6 A. Yes, basically to be sure -- go back to my 7 rumble strip analogy, you may get this a bunch, 8 but anyway, if you are just on the rumble strip 9 but you can come back and nothing's happened, 10 you know, there are probably a number of 11 requirements in here, you know, that might 12 cover lawsuits, et cetera, where the -- where 13 the entity might be out of compliance but, in 14 fact, could cure; and since we are really 15 not -- we are not really trying to catch them 16 on a speed bump, trying to be aware of it and 17 discuss it, but if it's something they can 18 actually cure and reposition themselves from a 19 financial strength standpoint, you know, then 20 as part of negotiations on the agreement, we 21 give them the chance to do that.</p> <p>22 Q. And is it your understanding that under 23 provisions like this, that the other party to 24 the letter of credit agreement is entitled to 25 30 days to try to fix covenant noncompliance in</p>
<p style="text-align: right;">Page 103</p> <p>1 MR. TERUYA: Okay. Why don't we take 2 a quick break just to change the tape.</p> <p>3 THE VIDEOGRAPHER: We are now going 4 off the record. The time is 11:06 a.m.</p> <p>5 -----</p> <p>6 (There was a discussion off the record.)</p> <p>7 -----</p> <p>8 THE VIDEOGRAPHER: We are now back on 9 the record. This is the beginning of tape No. 10 2 in the deposition of C. David Cook. The time 11 is 11:09 a.m. You may proceed.</p> <p>12 BY MR. TERUYA:</p> <p>13 Q. If you turn and look at page PNC 18977, section 14 7.01 (b) --</p> <p>15 A. Okay.</p> <p>16 Q. -- do you see there there is a discussion of a 17 30-day cure period?</p> <p>18 A. Yes.</p> <p>19 Q. And do you see there that essentially in this 20 case the corporation has 30 days to try to cure 21 any noncompliance after receiving written 22 notice from PNC?</p> <p>23 A. Right.</p> <p>24 Q. Is that a standard type of provision in letter 25 of credit agreements?</p>	<p style="text-align: right;">Page 105</p> <p>1 the event it occurs after receiving written 2 notice from PNC?</p> <p>3 A. That seems to be what this paragraph says, yes.</p> <p>4 Q. And is that your understanding of how 5 provisions like this actually worked in terms 6 of the practice --</p> <p>7 A. Yes.</p> <p>8 Q. -- at PNC?</p> <p>9 A. Mm-hmm.</p> <p>10 Q. Okay. You can set aside this document. 11 I'm going to briefly show you and ask 12 you if you recognize a document that has been 13 previously marked as Exhibit 326, which is a 14 letter of credit reimbursement and security 15 agreement between AGH and Pittsburgh National 16 Bank dated January 29, 1993.</p> <p>17 A. No.</p> <p>18 Q. So you don't recognize this document?</p> <p>19 A. No, but -- not -- it would have been very 20 unusual for me to have been involved in the 21 preparation or in a review of an actual 22 document. I mean it's really prepared 23 externally. The relationship manager, you 24 know, on the team worked with it, and I mean 25 they are really empowered in our process to go</p>

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<p>1 out and get the deal done.</p> <p>2 Q. Let me ask you just generally then, did you</p> <p>3 have an understanding of what remedies were</p> <p>4 available to you and to PNC in the event that</p> <p>5 AHERF or any AHERF entities failed to comply</p> <p>6 with a covenant contained within a letter of</p> <p>7 credit agreement that PNC had with AHERF at the</p> <p>8 time?</p> <p>9 MR. COGAN: Kevin, isn't that the</p> <p>10 question you just asked him in connection with</p> <p>11 the last exhibit we looked at? Since he didn't</p> <p>12 recognize the agreement, you asked him what</p> <p>13 generally his understanding was and you</p> <p>14 specifically went through --</p> <p>15 Q. I'm just saying in the real world, like what</p> <p>16 are the options you believe were available to</p> <p>17 you?</p> <p>18 A. In the real world, because each document's --</p> <p>19 you know, each document's different, each</p> <p>20 agreement's different, potentially the</p> <p>21 covenants are actually different because they</p> <p>22 may have been negotiated at different times,</p> <p>23 you know, if a deal's fully functioning and a</p> <p>24 relationship manager affirms compliance, I'm</p> <p>25 not particularly worried about it.</p>	<p>Page 106</p> <p>1 noncompliance?</p> <p>2 A. In a particular case that we were out of --</p> <p>3 that we were not in compliance, I would have</p> <p>4 been given a summary of the document and</p> <p>5 whatever was -- you know, whatever was possible</p> <p>6 to us under the document we would have</p> <p>7 discussed with them.</p> <p>8 Q. And can you tell me what are some of the types</p> <p>9 of remedies that you discussed during the '90s</p> <p>10 with respect to instances of noncompliance you</p> <p>11 came across?</p> <p>12 A. Yes, and depending on the type of</p> <p>13 noncompliance, I mean we could have discussed</p> <p>14 anywhere from -- from taking additional</p> <p>15 collateral to arranging a sale of assets to</p> <p>16 other -- you know, taking additional</p> <p>17 guarantees, other things that might have</p> <p>18 strengthened our financial condition.</p> <p>19 Q. And is acceleration also another type of remedy</p> <p>20 that you might have considered from time to</p> <p>21 time?</p> <p>22 A. Yes, certainly possible, yep.</p> <p>23 Q. And is making all obligations immediately due</p> <p>24 and payable another type of option?</p> <p>25 A. Yeah, I probably would have defined that as</p>
<p>1 If we are out of compliance at any</p> <p>2 one time, it's really more likely that the</p> <p>3 relationship manager's going to create a</p> <p>4 summary showing the, you know, the</p> <p>5 out-of-compliance situation and could well</p> <p>6 relate to or refer to specific covenants in</p> <p>7 whichever document's out of compliance, but it</p> <p>8 still would be very, very unusual for me to see</p> <p>9 the original document.</p> <p>10 Q. I don't necessarily mean, you know, what's</p> <p>11 specified in a particular document, but just in</p> <p>12 terms of your -- based on your experience as a</p> <p>13 manager of --</p> <p>14 A. Generally speaking --</p> <p>15 MS. HACKETT: Wait a minute. Stop.</p> <p>16 THE WITNESS: Let him answer.</p> <p>17 MS. HACKETT: Yeah, let him finish so</p> <p>18 you are sure you answer what he's asking.</p> <p>19 THE WITNESS: Okay. You are right.</p> <p>20 Sorry. Go ahead.</p> <p>21 Q. I was just going to say just based on your</p> <p>22 experience as a manager of the -- or being in</p> <p>23 charge of the group you were in charge of, what</p> <p>24 were the types of remedies that were available</p> <p>25 to you in the event of a covenant</p>	<p>Page 107</p> <p>1 acceleration.</p> <p>2 MR. COGAN: Acceleration.</p> <p>3 Q. Okay. I just meant to distinguish between the</p> <p>4 acceleration we saw where you asked the trustee</p> <p>5 to accelerate and making all the obligations</p> <p>6 immediately due and payable?</p> <p>7 A. Yeah, we more asked the -- we more asked the</p> <p>8 trustee, if I remember that paragraph, to</p> <p>9 declare an event of default and then</p> <p>10 accelerate, but if we had approached the</p> <p>11 customer, it would have been, you know, deemed</p> <p>12 to be acceleration.</p> <p>13 Q. Let me ask you this then: When you refer to</p> <p>14 acceleration, what do you mean by that, just to</p> <p>15 make sure we are on the same wavelength?</p> <p>16 A. It could be -- it could be the more, you know,</p> <p>17 generic causing all obligations to become due</p> <p>18 and payable, and I probably wouldn't have</p> <p>19 differentiated in the opening -- in the opening</p> <p>20 approach to, you know, would we like to</p> <p>21 accelerate, I don't know that I would have</p> <p>22 differentiated between having the client pay</p> <p>23 everything to us versus how we are going to</p> <p>24 handle the bondholders.</p> <p>25 Q. I'm sorry, so under your terminology,</p>